

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

TRAFFIC MONSOON, LLC, a Utah
Limited Liability Company, and
CHARLES DAVID SCOVILLE, an
individual,

Appellants,

v.

SECURITIES AND EXCHANGE
COMMISSION,

Appellee.

Case No.: 17-4059

DOCKETING STATEMENT

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: Traffic Monsoon, LLC v. Securities Exchange Commission

Appeal No. 17-4059

Court Appealing From: United States District Court, Central District of Utah

Court Docket No. 2:16-cv-00832-JNP District Judge: Jill N. Parrish

I. TIMELINESS OF APPEAL

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: April 14, 2017.

- a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal:

N/A.

- b. Is the United State or an officer or agency of the United State a party to this appeal?

Yes.

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4(a)(1)(B).

3. Date final judgment or order to be reviewed was **entered** on the district court docket:

(1) [ECF No. 79] Memorandum Decision and Order Granting a Preliminary Injunction and Denying the Defendants' Motion to Set Aside the Receivership entered in this action on March 28,

2017; (2) [ECF No. 80] Preliminary Injunction entered in this action on March 28, 2017; and (3) [ECF No. 81] Amended Order Appointing Receiver entered in this action on March 28, 2017.

4. Does the judgment or order to be reviewed dispose of all claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).

No.

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

No.

- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)?

Yes. 28 U.S.C. § 1292(a)(1) authorizes an appeal from an interlocutory order granting an injunction. 28 U.S.C. § 1292(a)(2) authorizes an appeal from an order appointing a receiver.

- c. If none of the above applies, what is the specific statutory basis for determining that the judgment or order is appealable?

N/A.

5. Tolling Motions: *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

- a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A): N/A.

- b. Has an order been entered by the district court disposing of any such motion, and, if so, when? N/A.

6. Cross Appeals

- a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011) (addressing jurisdictional validity of conditional cross appeals). N/A.
- b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n. 18 (10th Cir. 2010) (discussing protective or conditional cross appeals). N/A.

II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.

There are no current or prior related appeals.

III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

This appeal arises from a case alleging that Appellant, Traffic Monsoon, LLC (“Traffic Monsoon”), is trading in securities. Appellee, Securities Exchange Commission (“SEC”), has obtained an order placing Traffic Monsoon in receivership and has also obtained a preliminary injunction freezing all assets of the business, as well as Appellant, Charles Scoville’s (“Mr. Scoville” and, collectively with Traffic Monsoon, “Defendants”) assets since they were obtained through Traffic Monsoon. *See Exhibit 1*, March 28, 2017 Preliminary Injunction [ECF No. 80]. Defendants maintain that the only business of Traffic Monsoon is that of selling ad packs on the internet. The fact that Traffic Monsoon incorporates a business model that shares profits with its customers does not make it a security. The District Court certified that the preliminary injunction was immediately appealable under 28 U.S.C. § 1292(b). However, Defendants believe the certification was unnecessary because the appealed orders are specifically appealable under 28 U.S.C. § 1292(a). Pursuant to 28 U.S.C. § 1292(a), this appeal challenges the District Court’s March 28, 2017 preliminary injunction and order appointing receiver.

IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL.

(1) Whether the District Court lacks subject matter jurisdiction over this entire litigation since no “security” was involved in Traffic Monsoon’s business.

(2) Whether the District Court erred by concluding that the Dodd-Frank Act implicitly overruled the holding in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), which limited the extraterritorial application of § 10(b) of the Securities and Exchange Act of 1934.

(3) Whether the District Court’s conclusion that Traffic Monsoon’s business constitutes a Ponzi scheme lacks legal and factual support.

V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

N/A.

VI. ATTORNEY FILING DOCKETING STATEMENT

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PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A. ☒ Appellant

☐ Petitioner

☐ Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

☒ Retained attorney

☐ Court-Appointed

☐ Employed by a government entity

(please specify _____)

☐ Employed by the Office of the Federal Public Defender.

s/ Micah S. Echols

Signature

April 25, 2017

Date

CERTIFICATE OF SERVICE

I, Micah S. Echols, Esq., hereby certify that on April 25, 2017, I electronically filed the foregoing **DOCKETING STATEMENT** with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

☐ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

☒ I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Michael F. Thomson
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s/ Micah S. Echols
Signature

April 25, 2017
Date

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TRAFFIC MONSOON, LLC and CHARLES
D. SCOVILLE,

Defendants.

PRELIMINARY INJUNCTION

Case No. 2:16-cv-00832-JNP

District Judge Jill N. Parrish

IT IS HEREBY ORDERED:

Defendants are hereby prohibited from soliciting, accepting, or depositing any monies obtained from actual or prospective investors, individuals, customers, companies, and/or entities, through the Internet or other electronic means for Traffic Monsoon or a business model substantially similar to Traffic Monsoon's sale of AdPacks.

Defendants and each of their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmissions, electronic mail or overnight delivery service, and each of them, shall, within five days of receiving actual notice of this Order, take such steps as are necessary to repatriate and deposit into the registry of the Court in an interest bearing account, any and all funds or assets of Traffic Monsoon LLC or funds or assets that were obtained directly or indirectly from Traffic Monsoon LLC that presently may be located outside of the United States. Defendants and each of their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who

receive actual notice of this Order by personal service or otherwise, including facsimile transmission, electronic mail, or overnight delivery service, are hereby restrained from destroying, mutilating, concealing, altering, disposing, or transferring custody of any items, including but not limited to any books, records, documents, correspondence, contracts, agreements, assignments, obligations, tape recordings, computer media or other property relating to Traffic Monsoon, LLC.

I. ORDER FREEZING ASSETS

This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of Traffic Monsoon, LLC and of Charles D. Scoville that were obtained directly or indirectly from Traffic Monsoon, LLC (Defendants' Assets).

Except as otherwise specified herein, Defendants' Assets are frozen until further order of this Court, including but not limited to any accounts held at PayPal Holdings, Inc., Payza, Solid Trust Pay, Allied Wallet LTD, and JPMorgan Chase Bank, N.A. Accordingly, all persons and entities with direct or indirect control over any of Defendants' Assets, including but not limited to the Defendants, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Defendants' Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

Defendants Traffic Monsoon and Scoville, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance,

assignment, dissipation, concealment, or other disposal of Defendants' Assets.


Each of the financial or brokerage institutions, debtors, and bailees, or any other person or entity holding Defendants' Assets shall hold or retain within their control and prohibit the withdrawal, removal, transfer, or other disposal of any such assets, funds, or other properties.

II. STAY OF LITIGATION

The Court hereby orders a stay of all litigation in any court against Traffic Monsoon, LLC or Charles Scoville where (1) the Securities and Exchange Commission is not a party or privy to a party in the lawsuit and (2) the lawsuit involves or seeks to recover the assets frozen by this Order. The parties to any such litigation are enjoined from taking any action in connection with the lawsuit, including, but not limited to, the issuance or employment of process. All courts presiding over any such litigation are also enjoined from taking or permitting any action in the lawsuit until further order of this Court.

This Court shall retain jurisdiction over this action for the purposes of implementing and carrying out the terms of all orders and decrees that may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

DATED March 28, 2017 at 5:00 pm.



Jill N. Parrish
United States District Judge